

REMARKS

This is in full and timely response to the above-identified Office Action. Reexamination and reconsideration in light of the proposed amendments and the following remarks are respectfully requested.

Claim Amendments/Status

In this response claims 24-32 are cancelled; claims 11 and 23 are amended to overcome the minor typographical errors pointed out in paragraph #5 of this Office Action; and claim 33 has been amended to assume independent form. Therefore, independent claims 23 and 33 and dependent claims 7, 10 and 11 remain pending in this application. Inasmuch as allowable subject matter has been indicated, claims 7, 10, 11 and 23 are deemed to stand in allowable form.

Rejections under 35 USC § 103

The rejection of claim 33 under 35 USC § 103(a) as being unpatentable over Imamura in view of Chang et al., is respectfully traversed. In order to establish a *prima facie* case of obviousness, it is necessary to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed subject matter and without any inventive activity, be able to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered. It is also necessary to establish the proper motivation for any transfer of teachings that might be considered.

In this rejection it is stated that Imamura is silent as to *whether* the tubular member 31 *may be* divided into two halves or whether first and second temperature control fluids are passed through first and second zones or sectors. The Chang et al. reference is cited to suggest the structure which is acknowledged as not being disclosed in Imamura. However, the rejection then, without any reference to teachings in either of the references, asserts that it would be obvious to transfer teachings from Chang to Imamura because it would be "an obvious design choice" to enable separate temperature control given zones or sectors.

It is submitted that a "design choice" is merely a conclusion and not a reason which would motivate the hypothetical person of ordinary skill to consider the purportedly obvious combination. Furthermore, inasmuch as the division of the tubular member into two halves is not just a choice but is such as to involve a major functional

change/modification, to simply gloss over the difficulties involved, renders the assertion that this is a "design choice" untenable.

Assuming *arguendo* that there was suggestion that two zones would be better than one, and it was determined by the hypothetical person of ordinary skill that the arrangements found in Chang might bear some consideration, it would seem that the best course of action would be to drop any consideration of Imamura and simply go with the arrangement of Chang. After all, Chang is also directed to a dehumidification arrangement and if the dual-zone arrangement of Chang were, for reasons which have not been established in this rejection, considered to be desirable (c.f. design choice), it would seem that the adaptation of Imamura would require more time and trouble than it was worth and that switching straight to the arrangement of Chang would be the most expedient course of action. That is to say, both references cool to remove heat of absorption and use heated gas to regenerate. Chang et al. immediately offer the dual zone feature and would obviate the time, trouble and expense of adapting Imamura to be basically the Chang et al. device and to produce the same dual temperature zone effect.

It is therefore submitted that if the hypothetical person were to be faced (*arguendo*) with the task of establishing a dual temperature zone arrangement, this person would turn away from Imamura and simply rely on Chang et al. The proposed combination is therefore defective for at least this reason.

The stated rejection is deficient in that the PTO has failed to explain the basis, within the prior art that would have motivated the skilled person to apply the teachings of Chang et al. to modify the structure taught in Imamura. This is the most important part of any rejection based on a combination of references, and in its absence, the rejection should be withdrawn.

Furthermore, the references are not properly combinable. In the Office Action dated January 13, 2003 (Paper No. 10), it is acknowledged that Chang et al. are silent as to the "body being housed in an outer casing." While the Imamura reference shows a housing in Fig. 12, this housing is not structured in a manner that would allow the dual temperature zones of Chang to be established. How this dilemma is to be resolved is not apparent from the disclosure of either reference. It is submitted, that this fact also renders the rejection untenable in that the hypothetical person of ordinary skill is not permitted to exercise inventive activity and therefore must turn to the disclosure of one

or more of the references for this guidance. Inasmuch as the requisite teachings are not found in either of the references, the rejection should be withdrawn.

If the hypothetical person were to require teachings relating to a housing, this person would rely on Imamura, inasmuch as Chang et al. complicate issues by requiring dual temperature zones. Further, in that the rejection does not establish that the single temperature zone of Imamura presents a drawback that requires resolution, the hypothetical person would be very apt to simply ignore Chang et al. and simply turn to Imamura.

In conclusion, the references would actually lead the hypothetical person of ordinary skill (who must operate without any knowledge of the claimed subject matter) in the direction of picking one or the other and to avoid the time, trouble and expense of attempting to adapt one to meet the requirements of the other. The reconstruction of the references to produce the present invention has clearly been accomplished improperly based on hindsight.

Conclusion

Independent claim 23 and dependent claims 7, 10 and 11 contain allowable subject matter and have been amended to assume *prima facie* condition for allowance. Claim 33 in independent form has been shown to be non-obvious, in that the purportedly obvious combination would not be made by the hypothetical person of ordinary skill. Favorable consideration and allowance of this application is courteously solicited.

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